JOHN C. LEWIS, as Executor of the HANCOCK NATIONAL BANK OF SPARTA, GA.,

Petitioner,

versus

FIDELITY & DEPOSIT CO. OF MARYLAND,

Respondent.

BRIEF OF RESPONDENT

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IN THE,

Supreme Court of the United States

No. 802

JOHN C. LEWIS, as Receiver of the HANCOCK NATIONAL BANK OF SPARTA, GA.,

Petitioner,

versus

FIDELITY & DEPOSIT CO. OF MARYLAND,

Respondent.

JURISDICTION

It is doubtful whether this Court has jurisdiction because the judgment lacks the requisite finality (Judicial Code §237—28 U. S. C. §344). Whatever may have been the situation when the petition for certiorari was considered by the Court, it now appears from the brief of petitioner (p.17), that he brings into question the time of the deposits involved in this cause and whether they were prior or subsequent to June 25, 1930.

The Circuit Court of Appeals did not render a final judgment in the case. It reversed the action of the District Court and ordered: "That this cause be and is hereby remanded to the said District Court for further proceedings not inconsistent with the opinion of this court" (tr. p. 35). As we

shall presently show, M. L. Ledford did not become Treasurer until after December 16, 1931,[1] and if the Court takes judicial cognizance of this and accepts as a fact that the taxes involved were deposits made after Ledford became Treasurer, then a proper construction of the order assailed would give it finality, but if either the date or the character of the deposit is involved, then issues may arise in the trial court either on the present pleadings or amendments that may properly be filed. The respondent may also supplement its pleadings by alleging that if the Hancock National Bank qualified as a depository at a time when it lacked the corporate power to do so, then the acceptance of the public deposit was illegal and a trust relationship followed. It would then be pertinent for the lower court to settle the pleadings and inquire whether the funds coming to the Receiver from the closed bank were subject to the trust.[2]

That this Court has ordinarily no jurisdiction when the

Note 1. W. J. Speer, State Treasurer, died December 30, 1931. At his death he was Treasurer of Georgia. New York Times Index 1932. News Account appears p. 19, December 30, 1931.

W. J. Speer was Treasurer 1911 to 1931—Georgia Official and Statistical Register (published biennially by the Georgia Department of Archives and History) 1931 Vol. p. 53. M. L. Ledford succeeded Speer as Treasurer—Georgia Official and Statistical Register, 1933 Edition.

Note 2. A state officer may not lawfully deposit the money of the state in a bank that is not an authorized and qualified depository. Compare *Hancock County, et al.* v. *Hancock National Bank of Sparta*, 67 Fed. (2nd) 421-422.

Money may be traced and a lien fixed upon the assets of an unauthorized depository. *Allen* v. *U. S.*, 285 Fed. 678. *Board of Commissioners* v. *Strawn*, 157 Fed. 19; 15 LRA New Series, 1100, and other cases cited in the *Hancock County case*, supra.

A deposit made by a county treasurer in a bank not qualified as a depository, was traced as a trust fund in a closed national bank.

Watts v. *Board of Commissioners* (Okla.), 95 Pac. 771.
National Bank v. *Insurance Co.*, 104 U. S. 54; 26 Law Ed. 693.

judgment and order appealed from is reversed and the cause remanded for further proceedings not inconsistent with the opinion of the Court, is not open to question.

Haseltin v. *Central Bank of Springfield No.* 1, 183 U. S. 130:

> "We have frequently held that a judgment reversing that of the court below and remanding the case for further proceedings, is not one to which a writ of error will lie * * * while the judgment may dispose of the case as presented, it is impossible to anticipate its ultimate disposition. * * * It may happen that the defeated party "may amend his pleading by supplying some discovered defect. * * * To determine whether, in a particular case, this may or may not be done, might involve an examination not only of the record but even of the evidence in the court of original jurisdiction, and lead to inquiries with regard to the actual final disposition of the case by the Supreme Court which might be difficult to answer. We have, therefore, always made the face of the judgment the test of its finality and refused to inquire whether in the case of a new trial, the defeated party would stand in position to make a better case."

To the same effect are other cases, both prior and subsequent to the Haseltin case.

McComb v. *County Commissioners, Knox County*, 91 U. S. 1; 23 Law Ed. 185.
Schlosser v. *Hemphill*, 198 U. S. 173-175.
Louisiana Navigation v. *Oyster Comm.*, 226 U. S. 99-101.
Gulf Rfg. Co. v. *United States*, 269 U. S. 125; 70 Law Ed. 195.

STATEMENT OF CASE

The sole question for decision is whether the Georgia statutory policy fixing liens upon the property of its

depositories for the repayment of taxes deposited is valid and enforceable against national banks and the Comptroller of the Currency. The statement in plaintiff's brief (pp. 2-5) is reasonably accurate but the following additional fact should be added: The tax funds involved were deposited not earlier than December 30, 1931, and not later than May 28, 1932. These dates appear because M. L. Ledford did not become Treasurer until on or after December 30, 1931, and the bank failed May 23, 1932. Wm. J. Speer was Treasurer of Georgia from 1911 to December 30, 1931. Ledford was his successor.

SUMMARY OF ARGUMENT

I. This Court will readily look to public sources in determining the date when Ledford became Treasurer of the State of Georgia, in order to determine whether the deposit was made prior to or after the adoption of the June 25, 1930, amendment, and from the information thus obtained, will find that Ledford became Treasurer after the amendment was adopted.

II. The lien prescribed by the Georgia statute is valid under any construction that may be given to the opinion of the Circuit Court of Appeals. We contend that the opinion correctly states the Georgia law. In any event, the construction given to it by the federal court is narrower than the construction given by the state court, and error cannot be assigned upon a construction not involved in this case.

III. This Court will accept the construction placed upon the statute by the courts of Georgia, and as so limited, the statute does not come in conflict with the National Banking Act.

IV. The lien created by the laws of Georgia is included within the letter and spirit of the June 25, 1930, amendment. The language of the amendment is comprehensive and covers all kinds and manner of security authorized by the laws of the state in which the national bank is located.

V. The State of Georgia had the benefit of the 1930 amendment because its deposits were made after that date, even though the bank became a depository prior to that time. The lien being created by law and not by the bond, it was unnecessary to execute a new bond. After the adoption of the amendment all deposits had the benefit of it.

VI. The manner of the security prevailing in Georgia was not necessarily the same as the security provided for in some other states. There is no provision in the Congressional Act requiring uniformity of security.

VII. National banks have at all times possessed the power to qualify as state depositories under their incidental powers. The state demanded the security as a condition to making the deposit. National banks, in competition with state banks, should receive their proportion of state funds as deposits. The right of the state to demand security implies the incidental power of the qualifying bank to give security providing the manner and form of said security does not prevent the bank from discharging its legitimate functions under the law.

VIII. The Georgia laws properly construed require security as a condition to receiving a state deposit and consequently the correlative liability to give security exists.

IX. The Georgia lien is not *ultra vires*. The practice of placing state deposits in national banks had been questioned in 1928, because of certain decision in Minnesota. National banks faced the loss of state deposits. With these facts before it, Congress passed the amendment under discussion and it was for Congress to determine the means necessary to attain the desired end. It did so by using broad and comprehensive language permitting national banks to give the same security as could be given by the corresponding state banks.

X. This Court has held that the pledge of secondary reserves was inconsistent with good banking practice. It has

not held that where the state laws provided for a general lien of a type which would not interfere with the normal business of the bank, such lien could not exist in favor of the state even prior to June 25, 1930.

ARGUMENT

I.

THE COURTS TAKE JUDICIAL NOTICE OF THE TIME WHEN PUBLIC OFFICIALS HELD OFFICE.

Josey v. *Brown*, 119 Ga. 758; 47 S. E. 350.

"* * * of a governor's proclamation."

Ragland v. *Barringer*, 44 Ga. 114.

The foregoing applied to the judicial notice taken by the trial judge. This Court will take judicial notice.

"* * * and this Court is bound to take notice of public facts * * * public documents."

The Apelon, 22 U. S. (9 Wheat) 362; 6 Law Ed. 111.

"We may take judicial notice that the defendant, McChestney, is no longer secretary of the Commonwealth of Kentucky, his term having expired and his successor having been inducted into office."

Richards v. *McChestney*, 218 U. S. 492; 54 Law Ed. 1122.

"* * * and of public activities within the jurisdiction and more especially of public conferences and meetings of members of the community of common interest and wide concern of which the court ought to have known."

Brown v. *Spillman*, 155 U. S. 665-670; 15 Supreme Court 245; 39 Law Ed. 304.

"* * * and if the judge's memory is at fault, he may

resort to means he may deem safe to refresh his memory."

Brown v. *Piper*, 91 U. S. 37; 23 Law Ed. 200.

II.

THE LIEN IS VALID UNDER ANY CONSTRUCTION.

We accept the premise advanced by petitioner (petitioner's brief, p. 7) that this case involves the validity of the Georgia depository statute as applied to national banks and the power of national banks to give the statutory lien viewed in the light of the amendment of June 25, 1930, and the general powers of a national bank.

There is no difference between the construction given the statute by the Circuit Court of Appeals and the construction given by the Supreme Court of Georgia. The Circuit Court of Appeals correctly summarized the construction given the relevant state statutes by the Supreme Court of Georgia, and its Court of Appeals, as is fully set out in its opinion. (Tr. pp. 20-24 inc.). The lien binds and affects the property of the bank from the date of the bond.

> "It is true that the lien seldom needs assertion unless insolvency occurs but that is true of all security." (Opinion of Judge Sibley, p. 25.)

III.

THIS COURT WILL ACCEPT THE CONSTRUCTION PLACED UPON THE STATUTE BY THE COURTS OF GEORGIA.

Hartford Accident & Indemnity Co. v. *Nelson*, 78 Law Ed. 470, *decided by this Court February* 5, 1934, No. 239:

> "'The Supreme Court of the United States is bound by the construction given to a state statute by the "highest court of the state."'"

> "As to the meaning of the statute now challenged as invalid, the Supreme Court of Mississippi speaks with ultimate authority."
>
> *Supreme Lodge K. P.* v. *Meyer*, 265 U. S. 30-32; 68 Law Ed. 885-887.
>
> *Hartford case, supra.*

The construction of the statute by the Supreme Court is that the lien of the state is inferior to the rights of third persons who have received propery *bona fide* prior to insolvency and even inferior to the rights of depositors themselves to offset the bank's indebtedness against the obligation of the depositors.

In *State* v. *Brobston*, 94 Ga. 95, it was held:

> "Where a bank which is a state depository becomes insolvent while indebted to the state, and its effects are in the hands of a receiver, depositors in the bank who are also indebted to it by promissory notes have the right to set off against such notes in the hands of the receiver, the amounts justly due them respectively on their deposits. Such notes are assets of the bank upon which the state's lien takes effect only insofar as there may be balances due to the bank thereon after deducting the amounts of the respective deposits made *bona fide* while the bank did business and its effects were under its own control."

That case involved the exact question whether the first lien on all the assets of the state was an absolute lien binding from the date of its inception, or whether it should be given the construction contended for by Judge Sibley. The Court recognizing that there was but one question for its consideration, affirmed the action of the trial judge who had directed the receiver to "disregard the claims set up by the State of Georgia for a prior lien upon the papers of said bank to the exclusion of the depositors of said bank, to offset upon said papers in the hands of said bank whatever amount

there may have been to their credit at the date of the closing of said bank."

The construction above contended for has been adopted by the federal courts in Georgia in Hancock Bank case. (This case 67 Fed. (2) 961).

In re: *Blalock*, 31 Fed. (2nd), 612.

The State of Georgia and its subdivisions have for many years been entitled to a lien upon the property of persons or corporations who held public funds.

Compare *Parks' Code*, 1914, §1241 and §1245, quoted by Judge Barrett in the Blalock case, *supra*, p. 613, as follows:

> "While there might, in the absence of other legislation, be doubt as to giving this effect to such language, we find a legislative declaration to the effect that the language in the statute is equivalent to the declaration of a lien. In the Acts of the General Assembly of 1890-91, p. 101 (embodied in sections 1241 through 1245 Park's Code of Georgia of 1914), it is declared in section 1244: 'Nothing in preceding three sections shall be construed to affect the validity or force of the lien of any such bond from the date thereof as between the parties thereto.' The bonds in question are those of 'county treasurers', 'tax collectors', and 'tax receivers.'"

The opinions of Judge Sibley and Judge Barrett as to alienability of bank securities despite the existence of the lien is not some newborn, unheard of thing they have imported into the Georgia law, as opposing counsel seem to think. It was clearly explained by Judge Atkinson, in *Fidelity & Deposit Co.* v *Exchange Bank*, 100 Ga. 619, that the nature of a lien on certain classes of property such as negotiable paper and choses in action, is that it attaches only "in a general sense" from the date of accrual though not

"in the special sense which prevents alienation," but that it will be given full rank and effect from date of accrual in any court or administrative distribution of the proceeds of such property if it has not been previously alienated. The construction contended for by petitioner, that the lien would destroy alienability, was considered by the Court in that case and rejected:

> "It is manifest that no such intention ever entered the legislative mind."
> *Fidelity & Deposit Co. case*, supra, p. 625.

See also *Thornton* v. *Comer*, 80 Ga. 397.

The placing of a lien of the type provided for in the laws of Georgia, does not prevent a bank from discharging its normal functions. (Opinion of Judge Sibley, tr. pp. 23-25).

An analogy may be found in the liens provided for by federal statutes.

In: *First National Bank of Selma* v. *Colby*, 88 U. S. 609; 22 Law Ed. 687, this Court discusses (*Act June* 3, 1864, 13th *Statute at Large* 99, now 12 U. S. C. A. §137) and points out:

> "To make good any deficiency which may exist in the proceeds of the bonds to meet the amount expended in paying the notes of a bank, the Act declares that the United States shall have a first and paramount lien upon all the assets of the association. Whatever disposition therefore may be made of the property of an insolvent bank, the lien of the United States thereon must exist until the government is fully reimbursed."

The lien above referred to differs in no material respect from the Georgia lien except that it is paramount. It is not seriously suggested that the presence of this lien against the assets of every national bank in anywise interferes

with the normal and complete discharge of its banking functions. The liens in favor of the United States, as well as the Georgia statutes, have been and should be given a sensible construction consistent with the legislative purpose. *U. S.* v. *Catts*, 271 U. S. 354; 70 Law Ed. 986-988.

IV.

THE GEORGIA LIEN COMES WITHIN THE LETTER AND SPIRIT OF THE AMENDMENT OF JUNE 25, 1930.

This amendment provides:

> "Any association may, upon the deposit with it of public money of a state or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the state in which such association is located in the case of other banking institutions in the state."

It is contended by petitioner (brief p. 20), that: "Congress meant the pledging or depositing with the state of specific property of the form and character required of state banks by state law, or the giving of a security bond free of any liens incident that may be declared by state law to attach thereto." We contend that neither the language of the amendment, nor any inference properly drawn therefrom, supports this contention.

The amendment was construed by the Circuit Court of Appeals, Tenth Circuit, in *Fidelity & Deposit Co.* v. *Kokrda*, Receiver, 66 Fed. (2nd) 641, and received the broad and reasonable construction contended for here. That Court held:

> "(Headnote1.) National bank is authorized to give same kind of security for public deposit as state banks in same state, and state law determines procedure required in giving security.";

As pointed out in that case, page 642:

> "§90, *supra*, does not say a national bank may give security in the same *manner*, but that it may give security of the same kind as the state bank may give. Kind means: class, character, sort, description. Had Congress intended to limit the manner of giving security we think it would have said 'of the same kind and in the same manner', or used words of equivalent import. The plain purpose of the statute was to remove any doubt of the power of national banks to give security for public deposits and in that respect to enable them to invite public deposits on equal footing with state banks. It is our opinion that it authorized a national bank to give the same kind of security for public deposits as state banks are authorized to give, in a state in which such national banks are situated and leave to state law the question of the procedure to be followed in the giving of such security."

The word "security" is broader than the word "pledge". Indeed, "security" has by this Court been defined to include a lien upon money in bank, the holding of this Court being: "A lien is clearly within the meaning of the word 'security' as used in the Act."

> *United States* v. *Butterworth-Judkins Co.*, 267 U. S. 387; 69 Law Ed. 672.

Reference to standard works give the following definitions of "security":

> "Property given or serving to render secure the enjoyment or enforcement of a right."—*Webster's New International Dictionary.*
>
> "That which makes the enforcement of promise more certain than the mere personal obligation of the debtor."—*Ballantine's Law Dictionary.*
>
> "Bail, earnest, guage, pledge, security—the first four

words agree in denoting something given, paid or done. * * * Security may be of real or personal property; anything of sufficient value to make the creditors secure."—*Standard Dictionary.*

"Collateral security is security given for the payment of a debt or the performance of some other act."—*3 Bouvier's Law Dictionary*, pp. 30-32.

"A guaranty or pledge: something given or deposited as surety for the fulfillment of a promise or an obligation."—*Century Dictionary Encyc.*

The broad interpretation for which we contend is further manifested by the words: "of the same kind". "Kind" means "class, sort, description."—*Webster's New International Dictionary.*

"A class, a sort, a species."—*Century Dictionary.*

By authorizing security of the same kind as is authorized by the law of the state, Congress, of necessity, adopted by reference, the entire provisions of the state statute.

In *Corpus Juris*, Vol. 59, §459, the rule is thus stated:

"Reference Statutes, so-called, are not strictly amendatory in their nature and effect, although they adopt by reference merely provisions of other statutes on the same subject, it appearing in more enlarged or extended form, if otherwise complete in themselves. A Reference Act gives a right; declares a duty, or imposes a burden, and adopts existing statutes for the purpose of * * * carrying the provisions of the Reference Act into effect."

"As in authorized by the law of the state", means under any reasonable construction, in compliance with the laws of the state and Congress, in using this language, in effect adopted the law of the state. It is well established that in the construction of foreign statutes, this Court will adopt

the construction made by the courts by whose legislature the statute was enacted.

Cathcart v. *Robinson*, 5 Peters 264; 8 Law Ed. 120.

And the words, when used in the federal statute, should be given the same meaning that they had in the state statute. The effect is the same as if the state statute had actually been enacted as part of the revised statute. In that case the rule would have been:

> "Sections of a statute re-enacted in the revised statutes, are to be given the same meaning they had in the original, unless a contrary intention is clearly manifested."
>
> *U. S.* v. *LeBris*, 121 U. S. 278; 30 Law Ed. 946.

The known and settled construction of the laws by courts of the states from which they are taken are presumed to be adopted with the adoption of the laws.

Brown v. *Walker*, 161 U. S. 591; 40 Law Ed. 819.

> "The adoption by Congress of a state statute includes the adoption of the construction given to it."
>
> *Willis* v. *Eastern Trust & Banking Co.*, 169 U. S. 295; 42 Law Ed. 752.
>
> "Whenever Congress * * * has borrowed from the statutes of states provisions which have received in that state a known and settled construction before their enactment by Congress, that construction must be deemed to have been adopted by Congress together with the text which it expounded and "the provisions must be construed as they were understood at the time in the state."
>
> *Capital Traction Co.* v. *Hoffman*, 174 U. S. 1; 43 Law Ed. 873.
>
> "The settled construction of the equality clause of

the English Railway Act was accepted by this Court in construing a statute substantially taken from the English statute."

Interstate Commerce Commission, v. *Delaware*, etc. RR Co., 220 U. S. 235; 55 Law Ed. 448.

V.

THE STATE OF GEORGIA HAD THE BENEFIT OF THE AMENDMENT OF JUNE 25, 1930, WITHOUT THE EXECUTION OF A NEW DEPOSITORY BOND.

It appears from events leading up to the adoption of the amendment under discussion, that the Comptroller of the Currency and the Treasurer desired a continuation of the relationship of national banks as state depositories. It is therefore unreasonable to assume that as to future deposits it was first necessary to cancel all public designations and have the national banks designated anew. An analagous case was before this court in *Jones* v. *New York, etc., Guaranty Co.*, 101 U. S. 622; 25 Law Ed. 1030. The original charter of the debtor corporation was granted at a time when the effective statutes prohibited corporations of this kind from mortgaging their property. Subsequently, a mortgage was given to secure further advances at a time when the disabling statute had been repealed. This Court held:

"Where a deed is fatally defective for want of consideration to support it, such consideration subsequently arising may cure the defect and give the instrument validity."

Sumner v. *Hicks*, 2 Black 532; 67 U. S. 735.

"It is not necessary to go through the form of executing a second deed to take the place of the first one. This principle applies to the mortgage after all the advances had been made, conceding that it had before been invalid for the reason insisted upon."

It therefore logically follows that if the State of Georgia deposited money in this bank after June 25, 1930, any defect in the power of the bank to qualify originally, or defect in permitting a lien of this type, was removed by the conduct of the parties as the bank possessed the power to give the security.

"A court of equity will not lend its aid in the assertion of a mere legal right contrary to the clear equity and justice of the cause. Equity regards only the substance of things and deals with human affairs upon that principle."

.....*Jones case*, supra.

The adoption (or repeal) of a statute will validate previous pledges or liens.

Supervisors v. *Wisconsin Central RR Co.*, 121 Mass. 460-472.

Producers Naval Stores Co. v. *McAllister*, 278 Fed. 13-17.

Read v. *Plattsmouth*, 107 U. S. 568; 27 Law Ed. 568.

Turner Construction Co. v. *Union Terminal Co.*, 229 Fed. 702.

City of Little Rock v. *Merchants National Bank*, 98 U. S. 308; 25 Law Ed. 108.

Ewell v. *Daggs*, 108 U. S. 143; 27 Law Ed. 682.

"The general and established proposition is that what the Legislature could have authorized, it can ratify, if it can authorize it at the time of ratification." *Charlotte Harbor & Northern R. R. Co.* v. *Wells*, Comm. 260 U. S. 8; 67 Law Ed. 100.

In: *U. S.* v. *Heinzen*, 206 U. S. 370; 51 Law Ed. 1098; 27 Supreme Court 742,

this Court held:

> "What had already been done by an officer although without authority, can subsequently be made legal by a statute thereafter enacted."
>
> "A statute validating a contract of guaranty made by a municipality heretofore without power to execute a guaranty is not a retroactive law and is valid."
>
> *Jefferson City Gas Light Co.* v. *Freeman Clark and City of New Orleans*, 95 U. S. 644; 5 Otto; 24 Law Ed. 521.

Subsequent approval by the President makes valid a deed from an Indian which contained a covenant against alienation without presidential approval.

> *Pickering* v. *Lomax*, 145 U. S. 310-316; 36 Law Ed. 716.

See cases collected in *Rose's notes* 1932 *Supplement*, Vol. 4, p. 286; also *Anchor Oil Co.* v. *Gray*, 256, U. S. 516; 65 Law Ed. 68.

It is clear that Congress could at any time have authorized national banks to place a lien upon their assets for any legitimate purpose. This being true, Congress could and did validate (at least as to all future transactions) all security given by national banks for public deposits in the same manner as the security given by state banks similarly located.

In the *Anchor Oil case*, supra, this Court held in dealing with a lease of oil lands which was not valid until approved:

> "The approval (when given), related back and took effect as of the execution of the lease by the parties named."
>
> 256 U. S. at p. 522.

VI.

IT IS NOT NECESSARY THAT THE MANNER IN WHICH A NATIONAL BANK GIVES SECURITY SHALL BE UNIFORM IN EACH STATE.

This Court has, on numerous occasions, considered this principle in construing analagous statutes. For instance, in taxing national banks.

> "Restrictions on the taxing of national banks not intended to enact mathematical equality nor to do more than to require such practical equality as is reasonably obtainable in view of the differing situations of such properties."
>
> *First National Bank* v. *Anderson*, 269 U. S. 341; at 349; 70 Law Ed. 295.

A federal statute recognizing privileges as provided for by state law does not necessarily operate uniformly throughout the United States. The Bankruptcy Act provides, §6:

> "This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition. These exemptions vary in amount and form according to the laws of several states."

Remington §1291, *et seq.*

> "Nevertheless the bankruptcy court is bound by the construction put upon exemption laws by the highest courts of the state in which the bankrupt is "a resident."

Remington §1294—note 72.

> *Holden* v. *Stratten*, 198 U. S. 200; Law Ed. 1018.
> *Lehman* v. *Gumbell Co.*, 236 U. S. 448; 59 Law Ed. 666.

An examination of the statutes of different states in the Union demonstrates that legislative bodies generally recognize that public welfare demands that public funds deposited in banks, be adequately protected and have utilized the power of banks to give securities in various forms for public funds. In at least thirty seven states there are statutes providing that public officials may take some form of security, including a pledge of securities from banks, as distinguished from surety bond for the protection of various types of public funds.[3]

As stated by this Court in *Twin City Co.* v. *Hardin Glass Co.*, 283 U. S. 353-357:

> "Primarily it is for the lawmakers to determine the public policy of the state."

VII.

NATIONAL BANKS HAVE AT ALL TIMES POSSESSED THE POWER TO QUALIFY AS STATE DEPOSITORIES UNDER THEIR INCIDENTAL POWERS.

State of Nebraska v. *First National Bank of Orleans*, 88 Fed. 947:

> "The state through its legislative enactment said to our banks that it desired to place public funds on deposit (not under loan) subject to withdrawal at any time on the order of the Treasurer and at a rate of interest not less than 3% per annum. The defendant bank accepted the deposit on the condition offered * * * whether regarded as a loan or a deposit I do not think it in violation of the authority conferred on a national bank. Certainly the giving of security to do what in law it was obliged to do, was not a void act."

Note 3. See collection of cases 65 *ALR 1398*, and note; 65 *ALR 1412*; also *64 Fed., Note 2, p. 726.*

A bank has no specific power to take special deposits but if it does accept them it is held liable and the act is not deemed *ultra vires*.

First National Bank of Carlisle, Pa., v. *Graham*, 100 U. S. 680; 23 Law Ed. 750.

> "If the bank is accustomed to take such deposits, as are here in question, and this is known to the directors, all liability ensues in like manner as if the deposit had been authorized by the terms of "the charter."

See also: *Chattahoochee National Bank* v. *Schley*, 58 Ga. 339; 7. C. J. §751.

It was the intent of Congress that national banks should discharge their functions so as to meet the legitimate competition of state banks, and the acceptance of the appointment of a state depository for the public funds, is certainly a legitimate exercise of the banking function.

See *opinion of Judge Sibley* (rec. 23).

In *First National Bank* v. *Fellows*, 244 U. S. 417; 61 Law Ed. 1233, at 1239; LRA 1917C 283,
this court, in sustaining the constitutionality of the statute which permitted national banks to act as "trustees, executors, administrators * * * *or any other fiduciary capacity*, in which state banks * * * which come in competition with national banks are permitted to act under the laws of the state in which the national banks are located", evidenced the intention of according to national institutions such power as they must have to succeed in competition with similar state institutions. This is clearly pointed out by Judge Sibley in *Carcaba* v. *McVair*, 68 Fed. (2nd) 795 at 796. (Application for certiorari pending, No. [illegible]06, October term, 1933.)

VIII.

WHEN STATE FUNDS ARE PLACED IN A DESIGNATED DEPOSITORY THE RIGHT TO GIVE SECURITY EXISTS DIRECTLY AND BY IMPLICATION.

Park's Ann. Code, §1252-1254-1256, set out in full, pages 26-27, brief of petitioner in this Court.

Hancock County v. *Hancock National Bank of Sparta*, 67 Fed. (2nd) 421, holds:

> "The statutes authorizing deposits expressly required that the bond be taken before any deposit is made as does the Georgia State depository statute." (A decision involving county deposits in Hancock National Bank.)

This Court has held:

> "A public officer's duty to demand a pledge impliedly gives power to pledge in that specific case." *Texas & Pacific RR.* v. *Pottorf*, 78 L. Ed., p. 519, note 12.

Where state banks are so authorized a national bank may pledge assets to secure funds of a state.

City of Marion v. *Sneeden*, No. 400, decided Feb. 5, 1934; 78 L. Ed. 521.

IX.

THE LIEN IS NOT ULTRA VIRES.

It is contended by petitioner (brief, p. 21), that to construe the statute so as to authorize a lien would have the effect of seriously impairing, if not totally destroying the functioning and usefulness of a national bank. We can add nothing to the clear language used by Judge Sibley, in disposing of this argument in the lower court.

The bond is characterized (bottom p. 15 top 16, brief) as *ultra vires*, absolutely void and a mere nullity—in short, contrary to the public policy of the United States. No facts are given to support this total condemnation of the long adopted practice and statutes of the State of Georgia governing their relations with banks holding public funds. It is not suggested that the Amendment of 1930 is unconstitutional for any particular reason; nor does petitioner advance any solid ground upon which to base his declaration that it is against public policy. After all,

> "public policy of the state or of the nation is to be found in its constitution and its statutes, and when cases arise concerning matters upon which they are silent, then in its judicial decisions and the constant practice of the government officials * * * Courts will not look to other sources to determine the public policy of a state. As was said in *Hartford Fire Ins. Co.* v. *Chicago, Milwaukee & St. Paul RR Co.*, supra: 'The public policy of a state or nation must be determined by its constitution, laws and judicial decisions—not by the varying opinions "of laymen, lawyers, or judges as to the demands of the interests of the public.'"
>
> *Zeigler* v. *Illinois Trust & Savings Bank*, 245 Ill. 180 (1910) at page 193.

When the matter was before the lower House of Congress this explanation was made:

> "The purpose of the bill is to permit any national banking association to give security in the form required by state law to state banks, to secure the deposit of public funds of a state or any political subdivision thereof."
>
> (See *House Report* 1657, 71st Congress, 2nd Session.)

The public policy relative to qualification of depositories can fairly be ascertained by implication from the authorities formerly quoted and the views of this Court as expressed

in: *National Bank* v. *Graham*, 100 U. S. 699. In that case the bank sued for loss of government bonds; defended on the ground that "it was not authorized to receive bonds and valuables for safekeeping."

In disposing of the question, this Court held (p. 703):

> "The Forty-sixth section of the Banking Act of 1864, reenacted in the Revised Statutes of the United States, §5228, declares that, after the failure of a national bank to pay its circulating notes, etc., it shall not be lawful for the association suffering " 'the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep moneys belonging to it, and to deliver special deposits.' This implied clearly that a national bank, as a part of its legitimate business, may receive such 'special deposits'; and this implication is as effectual as an express declaration of the same thing would have been. *United States* v. *Babbit*, 1 Black 55."

The power of Congress to legislate on the subject being clear, "the choice of means to that end presents a question primarily addressed to the judgment of Congress if it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity; the extent to which they conduce to the end; the closeness of the relationship between the means adopted and the end to be attained, are matters for Congressional determination alone."

Burroughs v. *United States* No. 434, decided January 8, 1934, Vol 78, p. 356 at 360 and 361.

X.

THE GIVING OF SECURITY (OTHER THAN A PLEDGE OF SECONDARY RESERVES) IS WITHIN THE POWER OF NATIONAL BANKS RECEIVING DEPOSITS OF

STATE TAXES WHERE THE LAW REQUIRES SUCH SECURITY.

In petitioner's brief (p. 15), it is assumed that because this Court held, in the cases of Pottorf and the City of Marion, that a national bank did not have the power to secure public deposits by pledge prior to June 25, 1930, it did not have power to give a lien on all of its assets. The conclusion does not follow.

In the Pottorf case the Court was dealing with a private deposit. It specifically left open the power to make pledges for public deposits.[4] Furthermore, the record contained a specific finding, (p. 517), that the transaction challenged was the only instance in which the bank had ever pledged assets. The record here contains no evidence as the court disposed of the matter by striking part of the respondent's pleadings but the Circuit Court of Appeals finds in its opinion that national banks have, for fifty-five years, qualified under the Georgia law.

Neither is the City of Marion case an authority in support of petitioner's contention. In the first place, that case involved power to make a pledge to secure municipal deposits and this Court could have disposed of the matter by accepting the construction placed by the Circuit Court of Appeals on the laws of Illinois. The reasoning supporting the views of the Court is not applicable to the instant case. That case involved a pledge of bonds or secondary reserves which this Court holds is contrary to public policy and good banking practice. The instant case involved the question of whether, where the laws of the State create a general lien on the assets of a bank upon the bank's agreeing to become a depository of state funds, and a national bank accepts the appointment and qualifies as such depository, its act is *ultra vires*.

The City of Marion case does not deny to the national banks the power to create general liens on its assets. The

Note 4. "Whether a national bank could legally engage in such practice we have no occasion to decide." *Pottorf case at 518.*

reasoning of the Court, insofar as it relates to the unwisdom of allowing national banks to divest themselves of their secondary reserves to secure deposits, is not applicable in letter or in spirit.

State banks certainly and presumably national banks, have always been subject to certain general liens in all of their history without impairing their ability to conduct their business in usual course.

In Georgia, and we think the situation there is typic, the State has a general lien for taxes (Georgia Civil Code §3329). Whenever the bank rents a building or room in a building wherein to conduct its banking business, the landlord has a general lien for the rent (Georgia Civil Code §3340). Laborers working in a bank have a general lien for their wages (Civil Code of Ga. §3334). If the bank builds or improves its banking house or other real estate, laborers (Georgia Civil Code §3339) and materialmen (Georgia Civil Code §3352) have, as to the laborers, both a special lien on the building and a general lien on all other property of the bank and as to the materialmen, a special lien on the real estate. If a money judgment or decree is rendered against a bank, it carries with it a general lien on all of the property of the bank (Georgia Civil Code §3330, 5946,5432).

Neither the appointment of a receiver for a national bank nor the rule of equality in distribution prescribed in USCA Title 12, §194 (R. S. 5236) affects such liens or prevents their being given priority in distribution.

Earle v. *Pennsylvania*, 178 U. S. 449; 44L. Ed. 1146.
Scott v. *Armstrong*, 146 U. S. 499, 510; 36 L. Ed. 1059, 1063.

We assume that, from the grant of general powers under USCA, Title 12, §24 (3,7) as well as the special powers as to real estate given by USCA, Title 12, §29, a bank may

either rent a banking house or may build or improve one and may repair or improve any other real estate it may lawfully hold. The courts so hold.

Brown v. *Schiller*, 118 Fed. Rep. 981;
Same Case, 194 U. S. 18; 48 L. Ed. 857.
Weeks v. *International Trust Co.*, 125 Fed. Rep. 370.
Trustees First Presbyterian Church v. *National State Bank*, 57 N. J. Law 27, 29 A. 320, aff'd 58 N. J. L. 406; 36 Atl. 1129.
Cooper v. *Hill*, 94 Fed. Rep. 582.

Out of the contract of lease or repair, liens would arise generally against the bank's assets, through uniform state laws operating upon state and national banks alike. Certainly the existence of such liens has never operated to handicap banks from successfully carrying on the functions for which they are created.

The express power granted national banks in USCA, Title 12, §24 (3), to make contracts and the incidental powers granted sub-division 7 of the same section, confer authority on these banks to do all those things which are "required to meet all legitimate demands of the authorized business and to enable a bank to conduct its affairs within the general scope of its charter safely and prudently.

First National Bank v. *National Exchange Bank*, 92 U. S. 122, 127; 23 L. Ed. 679.
Western National Bank v. *Armstrong*, 152 U. S. 346; 38 L. Ed. 470.
Clement National Bank v. *Vermont*, 231 U. S. 120, 140; 58 L. Ed. 147, 157.

"This necessarily implies a right of a bank to incur liabilities in the regular course of its business, as well as to become the creditor of others."

Same cases.

Nor does the fact that a lien may arise in favor of the creditor invalidate the liability, if the transaction be otherwise free from impeachment. For example, in recognizing that a national bank may secure an ordinary creditor by pledging its assets, the court recognizes the validity of the pledgee's lien on the assets, even though it be a pledge of all the bank's assets, as was upheld in *Wyman* v. *Wallace*, 201 U. S. 230, 50 L. Ed. 738, cited approvingly in the City of Marion case.

A national bank is expressly authorized to receive deposits. 12 U. S. C. §24 (7). This is one of its most useful and important functions, equally important to the successful operation of the bank as it is to the public.

If state banks in Georgia may enter into the contract with the Governor, prescribed by the statute as a condition precedent to any state money being deposited in the banks, and if national banks cannot do so, the national banks would be deprived of the ability successfully to compete for such deposits. Whenever the bank makes the contract, which the statute requires to be evidenced by a bond, with a surety thereon, by operation of law, a lien arises on all of the assets of the bank, as principal, and of the surety. This is a reasonable safeguard on the part of the State for the protection of its public revenues.

Unless national banks can comply with the statute and give the bond, from the giving of which a general lien by operation of law arises, it cannot become a depository of state funds—its ability to compete with the state banks for these deposits is gone.

It would seem that the statement of Mr. Justice Hughes, respecting a state law affecting the liability of a national bank to the state for taxes on deposits in it, would apply here with equal force, that "provision (in the State law) for such agreements, instead of constituting interference with

a federal instrumentality, would aid it in performing its functions, and would remove unnecessary obstacles to the successful prosecution of its business."

Clement National Bank v. *Vermont*, 231 U. S. 120, bottom p. 140, top page 141; 58 L. Ed. 147, 157, 158.

The Georgia law giving this lien, as it has been correctly construed by the Court of Appeals in the decision of Judge Sibley (who is perhaps the greatest jurist the State of Georgia has ever produced) in this case, does not prevent a bank from freely using its stocks, bonds, promissory notes and other similar assets in which the bank's "secondary reserves" are carried. The title of a pledgee or vendee for value of such securities, in ordinary course of business, would be superior to the State's lien.[5]

For more than fifty years, banks, both state and national, have been qualifying as depositories in Georgia under this statute; and we believe it may be said with all assurance

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Note 5. For more than 100 years it has been recognized that the priority due to the United States (which is not strictly a lien but is of the highest dignity) does not apply to assets of which "the debtor has made a bona fide conveyance * * * to a third person, or has mortgaged the same to secure a debt, or if his property has been seized under a fi fa., the property is divested out of the debtor and cannot be made liable to the United States."

Theleusson, et al., v. *Smith*, 2 Wheat. 396; 4 Law Ed. 271, at 278.

Compare, also, the reasoning of this Court in the recent case of *People of New York* v. *McClay*, 228 U. S. 290; 77 Law Ed. 754.

If the United States may construe its claim of priority so as to permit the debtor to continue in business, no valid reason appears why the State of Georgia cannot in advance, contract with its depository that its lien shall be a general one of the type fully discussed in this brief and that the specific lien shall come into effect when the depository breaches its contract and fails to pay over on demand state funds deposited with it.

that the existence of this lien has never embarrassed any of them in the ordinary operations of the business.

The enactment of the amendment of June 25, 1930, of section 45 of the Banking Act, authorizing national banks to secure public deposits of states and their sub-divisions by pledge of securities is evidence of a congressional finding that it is not inconsistent with the purposes of the National Banking Act or materially hazardous to the safe and prudent conduct of these banks to allow them to divest themselves, by pledge, of such portion of their securities as may be necessary to secure public deposits. We presume that Congress assumed that the visitorial powers of the Comptroller of Currency would be a sufficient safeguard against imprudent transactions of this kind in particular cases.

As Judge Sibley points out in the opinion of the Court of Appeals in this case, if it be consistent with the purposes and safety of national banks to allow them to pledge specific assets (and withdraw from their power of disposition of what the Court in the opinion in the City of Marion case calls the "secondary reserves") it is certainly not inconsistent with the purposes of the Banking Act or hazardous to the safety of the banks to allow them to create the general lien of the nature imposed by the Georgia laws, which do not interfere with the free use of negotiable securities in ordinary course of business.

While the Court of Appeals of the Fifth Circuit in a prior case in which Judge Sibley did not sit (*Pottorf* v. *El Paso-Hudspeth Road District*, 62 F. (2), 498) did express views, as to a national bank's powers to pledge securities to secure a public deposit contrary to the opinion of this Court in the City of Marion case, the burden of Judge Sibley's argument in this case is to show that the reasons for denying the power to pledge do not apply to the power to become a depository with the consequent general floating lien on the bank's assets; and the reasons he

gives seem sound, and such as fully to differentiate this case from the City of Marion case.

Congress has recognized that security may consist by making deposits or it may be done *otherwise. U. S. C. A. Title* 12, §90-91 (Appendix to petitioner's brief, p. 30). In §91, the provision for security is by the requirement of additional deposits of bonds or of lawful money, and the fact that Congress sometimes required a pledge, and at other times permitted other forms of security, is an indication that there is nothing in the public policy of the United States as expressed by Congress which prevents the states from requiring either a pledge or other form of security from their depositories.

The condemnation of secret pledges has no place here. The fact that a national bank is a state depository is a matter brought home to the depositors legally, as well as actually. One who does not shut his eyes to realities of banking business, knows that national banks display on their windows and by other forms of advertisement, the fact that they are state depositories. If this fact does not appear in the published statements, then the criticism is on the department that prescribes the form of the statement rather than the Georgia law. As was well said by Circuit Judge Alschuler in his dissenting opinion in the Sneeden case, 64 Fed.(2nd), at 731.

> "It seems to me that the vice is not with the pledging of the assets, but with the laws and regulations concerning reports and advertisements of banks. I fully agree that banks should be required to make frequent public reports of their condition, and that in such reports it should be specifically disclosed what part of the reported assets is so pledged. To my mind it is vicious practice to permit banks to advertise their 'resources' at an amount inclusive of their total deposits, without requiring that at the same time, and quite as

prominently, there be stated the liabilities to which the resources are subject."

To the same effect is the suggestion from the Supreme Court of Tennessee, *Grigsby* v. *Peoples Bank*, 158 Tenn., 11 S. W. (2nd) 673 (1929):

> "Our statutes, requiring periodical published statements of the condition of banks, makes it a serious offense to publish a false statement. Shannon's Ann. Code, Chaps. 2104-2104a4. A true statement would include 'secured deposits' and it is the duty of the banking department of the state to require this in the form which it is authorized to provide for such statements. If this is done, we are unable to see how any hardship can result to unsecured depositors or stockholders further than would result where the bank borrowed a fund and pledged its assets as security."

Inasmuch as the taking of security for public deposits was a practice known to the public, sanctioned by the decisions of the courts, state and federal, and by the practice of the Comptroller of the Currency, the transaction could not be held *ultra vires*, and the bank having received the states's taxes cannot plead *ultra vires*.

American Surety Co. v. *Philippine National Bank*, 166 N. E. 634, citing:

First National Bank of Aiken v. *Mott Iron Works*, 215 U. S. 240; 66 Law Ed. 593.

Scharnick v. *Butler*, 185 N. E. 111.

XI.

VALID LIENS ARE NOT AFFECTED BY CONGRESSIONAL ACTS NOR THE DECISIONS OF THIS COURT.

Scott v. *Armstrong*, 146 U. S. 493; 36 Law Ed. 1063.

A construction of the banking acts so as to exclude all preferences was contended for in the Scott case, *supra*. The exact question was one of set-off. The Court, after examining the relevant acts of Congress providing for ratable dividends and prohibiting preferences, holds:

> "It is insisted that the assets of a bank existing at the time of the act of insolvency include all of its property without regard to any existing liens. * * * *We do not regard this position as tenable.* Undoubtedly any distribution by a national bank being insolvent * * * of its choses in action, made to prevent the application for the payment of its circulating notes or to prefer one creditor to another, is forbidden *but liens, equities* or rights *arising by express agreement* or implied from the nature of the dealings between the parties or by operation of law *prior to insolvency* and not in contemplation thereof *are not invalid.* The provisions of the act are not directed against all liens, securities, pledges or equities whereby one creditor may obtain a greater payment than another, but against those given or arising after or in contemplation of insolvency." (Italics ours).

Nor is *Davis* v. *Elmira Savings Bank*, 161 U. S. 275; 40 Law Ed. 700, *an authority to the contrary*. That case involved a preference under the New York law of the debt of an insolvent national bank for a deposit by a savings bank. The New York statute providing a different method of distribution to unsecured and ordinary creditors from the provisions of the federal statutes, were held in conflict with them and necessarily invalid. That was because the two statutes covered the identical subject while here the federal statute covers the distribution to depositors and the state statute covers payment to the sovereign who obtained a lien as a condition to making a deposit. To quote from the Davis case:

> "It is clear that these two statutes cover exactly the

same subject matter. Both relate to insolvent banks; both ordained that the right of preference on the one side and the duty of ratable distribution on the other *shall only result from insolvency*; both cover the assets of such bank coming *after* insolvency into the hands of the officer * * * authorized to administer them. The two statutes cover the same subject matter and relate to the same duty."

The court further says: "It cannot be doubted that one of the objects of the national bank system was to secure in the event of insolvency a just and equal distribution of the assets of national banks among all unsecured creditors and to prevent such banks from creating preferences in contemplation of insolvency."

It is apparent that the Court was considering the distribution to unsecured creditors which is provided for by Code §2366, subdivision 70, as amended Ga. Law 1927, pp. 195-199, cited in Luther Williams case. The lien contended for in this case is not part of the banking act except in that the banking act recognizes existing liens. See *Luther Williams Bank & Trust Co.* case, 166 S. E. 260; 45 Ga. App. 231, at page 832.

The Davis case is really an authority in favor of the respondent. It holds (p. 278):

"It is certain that insofar as not repugnant to Acts of Congress the contracts and dealings of national banks are left subject to the state law."

But in holding invalid the New York statute, the Supreme Court points out:

"That statute does not profess to deal with the bank and its relation as a going concern. It wholly and exclusively undertakes to regulate the distribution of assets after insolvency. Insolvency and insolvency alone

is made the criterion *from which the preference is to arise.*"

The mandate runs not to the bank but to the assignee or agent in charge, and

> "There is therefore no room for implying a contract."

It is pointed out that the New York statute does not profess to change the legal relations which result from a (savings) deposit in the bank. However, the court points out, pp. 288-289:

> "True it is that where by state law a *lien is made to result from a particular contract, that lien* when its existence is not incompatible with the Act of Congress, *will be enforced.*"

Scott v. *Armstrong*, above referred to, is discussed in the Davis case, and it is conceded that:

> "Where from the particular facts stated the relation was not that of an *ordinary creditor* but was one giving rise to a specific lien or right resulting from the contract, and which was *in being before* the insolvency took place, then such a relationship will not be disturbed by insolvency."

The proclamation by the State of Georgia naming the Hancock National Bank a public depositary and authorizing the tax-collectors to make payments there instead of directly to the state treasurer (Record, p. 8), and the giving of a lien on its assets by the execution of the bond were, to quote from the Davis case (bottom page 289): "Parts of the same transaction and which each gave credit to the other on the faith of the simultaneous credit."

It is further pointed out that the question in the Davis case is whether a claim existing at the time of insolvency and

up to that date unsecured, shall by the operation of an insolvent statute, be converted *after the insolvency*, into a preferred claim. Clearly it should not be, and the Davis case is based upon the premise above emphasized, to-wit: that an unsecured claim cannot, because of insolvency, become a secured claim.

This Court carefully limits the Davis case to its facts when, in the concluding paragraph it says:

> "Nothing, of course, in this opinion, is intended to deny the operation of general and undiscriminating state laws on contracts of national banks so long as such laws do not conflict with the letter or general objects and purposes of Congressional legislation."

This Court has held:

> "Insolvency gives unsecured creditors no greater rights than they had before." *Merrill* v. *National Bank of Jacksonville*, 173 U. S. 147.

> "Whatever Congress may be authorized to enact by reason of possessing the power to pass uniform laws on the subject of bankruptcies, it is very clear that it did not intend to impinge upon *contracts* existing between creditors and debtors by anything prescribed in reference to the administration of the assets of insolvent national banks."
>
> *Merrill case*, supra.

Two cases questioning the validity of security for the repayment of public deposits have been before this Court. In each instance *certiorari* was denied.

Mothersead v. *U. S. F. & G. Co.*, 22 Fed. (2nd) 644; (C. C. A. 8, 1927); *certiorari* denied, 276 U. S. 637, a pledge of assets in a state bank.

Pottorf, Receiver, v. *El Paso, etc., Road District*, 62 Fed.

(2nd) 498; case here reported: *Pottorf, Receiver,* v. *Underwriters of Lloyds,* certiorari denied, 288 U. S. 724, Case No. 689.

CONCLUSION

We have endeavored to discuss and refute the points raised by petitioner. To discuss all of the subjects that appear in the brief, would unduly extend this discussion. The issue before the Court is really a narrow one: Is the public policy of Georgia as expressed in the statutes construed below, and as further illustrated by the Act of 1933 (petitioner's brief, p. 28), requiring a lien in favor of the state (and by the Act of 1933 in favor of its subdivisions), as a condition to the deposit in banks of public money, so unreasonable a requirement as to prevent national banks from becoming qualified public depositories?

We recognize the visitorial power of the Comptroller of the Currency over national banks, and that in a proper case the question here raised should be decided. However, we contend that if national banks should not qualify as public depositories in Georgia because of the Comptroller's views of policy this should be disposed of by administrative rulings applicable to the future, and cannot invalidate the rights of the state already accrued. Certainly this should be true as to all money deposited by the state after the adoption of the 1930 amendment.

Compare: *State of Nebraska* v. *First National Bank of Orleans,* 88 Fed. 947.

Where national banks are opposed to the state practice, the lien provided for by state law is not held invalid. On the contrary, to continue business the national bank need not necessarily subject itself to the lien.

Compare: *Abilene National Bank* v. *Doldez,* 179 Fed.

461; *certiorari denied*, 218 U. S. 673; 54 Law Ed. 1205, *citing Noble State Bank* v. *Haskell*, 219 U. S. 105; 55 Law Ed.

This Court has generally affirmed decisions giving effect to equitable liens created by the Act of Legislature on either income or property.

> *Ketchum* v. *City of St. Louis*, 101 U. S. 306; 25 Law Ed. 999.

We may well conclude this brief with a quotation from a decision which was before this Court on an application for certiorari in *Pottorf, Receiver, v. El Paso District*, supra:

> "It would be a narrow and unreasonable view indeed of the powers of a national bank which would defeat a contract for the security of public funds entered into as this one was, for the purpose of complying with statutes governing depositories, openly and above board with the express authority of the directors of the bank, and with the sanction of the department."

Respectfully submitted,

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